

The

Arbitration Journal

ARBITRATION MOVEMENT IN HISTORICAL
PERSPECTIVE

NEGOTIATION AND ARBITRATION

CONTRACT INTERPRETATION

OVERSEAS TRADE

FAIR ADVERTISING PRACTICE

STOCK EXCHANGE ARBITRATION

REVIEW OF COURT DECISIONS

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QUARTERLY OF THE AMERICAN ARBITRATION



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The Arbitration Movement in Historical Perspective

Hon. Augustus N. Hand

*Judge of the U. S. Court of Appeals for the Second Circuit
at the Dedication of the Founders' Room
of the American Arbitration Association
in New York on November 12, 1953*

I deem it a pleasure to participate in these ceremonies dedicating an arbitration hearing and lecture room to the founders of the present day arbitration movement in the United States and to do honor to the men and women who have done so much toward its development. We are here to do them honor; yet, it is I who feel honored at being called to this task, for among the pioneers of arbitration are some of the most eminent jurists, the most far-sighted civil and political leaders, and the most forward-looking men of business this country has produced.

I note that among them there were two former Chief Justices of the United States Supreme Court, Charles Evans Hughes and Harlan F. Stone. The former was Honorary President of the American Arbitration Association in 1926, the year of its founding, and the latter, then Dean of Columbia University School of Law, was one of the group who signed the Charter of the Arbitration Society of America in 1922.

A few years ago, while sitting as a judge in an anti-trust case involving the motion picture industry, I had occasion to review a system of arbitration. I saw in the motion picture industry an organized system, administered by the American Arbitration Association, which, as I said in my opinion "dealt with trade disputes . . . with rare efficiency." Those arbitration proceedings were interrupted by the resumption of the anti-trust suit, but I recommended continuation of the system of arbitration and I regretted that the law did not permit me to direct it. I am pleased to learn that once again, due to the need for resolving business controversies in a peaceful way, the industry is thinking of reconstituting the arbitration program that worked so well.

Remote indeed are the days of the old English tradition, founded on Lord Coke's decision in the Vynior Case of 1609 holding arbitration agreements unenforceable by the courts. Under that decision, for centuries courts jealously guarded their prerogatives, to prevent their jurisdiction from being "ousted." That situation prevailed for centuries until it was rightly challenged by Judge Hough of the United States District Court for the Southern District of New York in 1915

in *United States Asphalt Refining Co. v. Trinidad Lake Petroleum Co.* (222 Fed. Rep. 1006). Judge Hough found that "there has long been a great variety of available reasons for refusing to give effect to the agreements of men of mature age and presumably sound judgment, where the intended effect of the agreement was to prevent proceedings in any and all courts and substitute therefor the decisions of arbitrators." The English, however, have amended their law; "the English Arbitration Act is such a statute. It has compelled the courts of that country to abandon the doctrine that it was wrong and wicked to stay away from the courts when disputes arise." Judge Hough, however, further held that in the absence of a specific statute, he was bound to follow the established law and refused to direct arbitration. The Judge said "neither the Legislature of New York nor the Congress has seen fit thus to modernize the ideas of the Judges of their respective jurisdiction."

Statutory remedy came about some 5 years later, in 1920, when New York adopted the first modern arbitration law in the United States. The sponsorship of this statute by the New York Chamber of Commerce and the New York State Bar Association, and the signing of that bill into law by Governor Alfred E. Smith was the first significant departure from the archaic beliefs expressed in Lord Coke's doctrine. I am happy to see that the sponsors of that law, Charles T. Gwynne and Julius Henry Cohen, of the New York Chamber of Commerce, are receiving recognition this day, along with Governor Smith.

Following the enactment of the New York Arbitration Law, the movement gained momentum. The Federal Government passed an arbitration statute in 1925, as did about a dozen states. Innumerable trade associations have adopted arbitration procedures as part of their established way of life, and have brought to the determination of trade disputes the expert judgment of men familiar with the subject matter and the practice and experience of the trade.

Even more well known and better publicized is the arbitration experience in the relations between labor and management. It is reported by the United States Department of Labor that 90% of all collective bargaining agreements today include provisions for arbitration of grievances. This voluntary use of non-governmental avenues of justice by all Americans is a source of strength.

That there is today no necessary conflict between arbitration and the courts is widely understood by the public and the legal profession. Perhaps the best example of the current attitude of jurists to arbitra-

tion is indicated in the remarks of Harlan F. Stone, late Chief Justice of the United States Supreme Court:

"The very refinements and complexities of our court machinery . . . often make it cumbersome and dilatory when applied to controversies involving simple issues of fact or law. This is especially the case when the issue of fact turns upon expert knowledge as to the nature or quality of merchandise or the damage consequent upon the failure to perform a contract for its delivery . . . which can be better determined by a layman having training and experience in a particular trade or business than by judge and jury who have not had that training and experience."

Charles Evans Hughes, another former Chief Justice and a founder of the arbitration movement, called attention to still another advantageous feature of arbitration. He said:

"The influence of arbitral arrangements and judicial institutions is far greater than their service in disposing of particular differences. The fact that there is a court, a facile recourse to arbitral procedures or judicial remedy, makes actual resort to such processes the less necessary, because the spirit of fairness and accord is cultivated."

The great work that has been done in recent decades we owe to the farsighted men and women who planned and carried through the organization of the arbitration movement. We can only resolve to continue the work they have begun and hope that with their inspiration there will take place within these walls the peaceful settlement of disputes and the general advancement of the knowledge of arbitration which they strove to enhance.

Hon. Florence E. Allen

*Judge of the U. S. Court of Appeals for the Sixth Circuit
at the Dedication of the Frances Kellor Memorial Hearing Room
of the American Arbitration Association
in New York on November 19, 1953*

We have come here to dedicate this room to the attainment of the splendid purpose to which Frances Kellor for so many years devoted her high intellect, her clear and objective vision, and her integrity of purpose—namely, the extension of harmony and friendship through-

out the community and throughout the world by the settlement of controversies through arbitration.

Frances Kellor pointed out that arbitration is based essentially on good faith. As she says, "A very high degree of good faith is required for the parties to agree to accept as final and binding, without appeal, the award of an arbitrator."

But the arbitration system is based on more than mere honest lawful intent—the good faith of the parties—in any individual case. It is founded, as is every system for the securing of justice, upon faith and trust. History has nothing finer than the constant and ever-recurring faith of men of every era and condition that, by finding the facts and applying accepted rules of conduct, whether crystallized in law or based on custom, justice will be done. This belief existed in the time of Hammurabi. We find it among the aborigines of Australia, the North American Indians, as well as the sophisticated civilizations of Europe and Great Britain. In response to this belief—this faith—the race from earliest time has erected tribunals for the doing of justice.

The system of arbitration which comes to us from Greece and Rome is another phase of the same faith in the essential justice of fair hearing and impartial decision. Perhaps it even presents an instance of faith on the highest level. For the man who deliberately and voluntarily submits his case to another's decision and pledges himself to abide by it has active faith of a high order in the method and in the integrity of the arbitrator.

This is all the more marked because in our time, as in all eras of tense world conflict, both good faith and faith in the orderly processes of law are at a low ebb. Frances Kellor had experience of this.

When Frances Kellor came to the Arbitration Association she had already devoted a long period of time and her rare intellectual powers to the problem of establishing world peace. Her volumes on "Security against War" published in 1924, in which Miss Hatvany gave her valuable collaboration, are the most penetrating analysis of the working of the League of Nations that I have ever seen. They included constructive criticism of the operation of the League, for making which, in some circles, Frances Kellor was virtually ostracized.

In her truly distinguished book Frances Kellor dwells upon the disastrous effects of ignoring the possible solution of tense international controversy through the World Court. She showed, with the eloquence which comes from absolutely authentic statement, how the Council of the League did injustice between the small nations in in-

cidents like that of Vilna between Poland and Lithuania, the case of the German settlers in Poland, the Italian-Greek dispute, and other instances. Then she pointed out that an instrument existed capable of developing law and of establishing justice which too often was not used, namely, the Permanent Court of International Justice, the so-called World Court. Lithuania and other national groups had requested to have their cases submitted to arbitration or to the Permanent Court of International Justice without success. In the Italian-Greek dispute, for instance, which arose out of the murder in Greek territory of several members of a commission appointed to locate the boundary between Greece and Albania after the First World War, the court was squarely bypassed. It was proposed that important questions as to the powers of the Council under the Covenant be submitted to the Permanent Court of International Justice.

During the discussion, Signor Salandra of Italy said that to refer these questions to the Permanent Court would be to "deprive the Council of its power." M. Hanotaux, of France, said that the Court was "clearly not the organization competent to settle constitutional questions," and Viscount Cecil said that "in so far as there are political questions involved, the opinion of the Court on them would be valueless." The ultimate decision, therefore, was that these legal questions are political questions and constitutional questions upon which the Permanent Court could not rule. The questions were finally answered by the committee of jurists for the Council which had picked the committee. Thus a political body, instead of the Permanent Court, determined law of the highest moment. This did not make for justice or for peace.

As Frances Kellor pointed out, the result of having legal questions not properly submitted to the Court was that procedure to protect the rights of the parties was not followed. Certain sessions were private instead of public. In certain disputes the Council heard only one side. In the German settlers' case the settlers were denied the right to a hearing.

The great nations of the world later agreed with Miss Kellor's conclusion as to why the League of Nations failed. It was generally agreed that it had not done justice and had failed to use the Court. In response to the demand at San Francisco and to criticisms by scholars and publicists of the disuse of the Court, Article 36 of the U.N. charter provides that the Security Council should take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice.

But alas for the pressures of political decision! An echo of the debate on the Italian-Greek question in the League was heard in the United Nations Assembly debate on the South African case. It was proposed that, inasmuch as a contract between South Africa and India was involved, the case should be submitted to the Court. Dr. Wellington Koo said that a legal question was presented but that it was "unfortunate to put such a heavy strain on the tribunal," so the Assembly passed a resolution which prevented the question from being submitted to the Court.

Out of this background of rich experience Frances Kellor threw herself into the arbitration project. Here was a system which relied, not upon political pressures, but upon a hearing and upright decision—capable of being extended throughout the world and of bringing with it healing processes of reason and friendship. How well the distinguished men who initiated this significant venture planned and wrought—how well Frances Kellor served the cause we all know. Eleven governments in effect recognize and adopt the rules of the Association. Last year the arbitrations involved forty-seven countries "including the twenty Latin-American Republics, England, France, Germany, Switzerland, Italy, Greece, Portugal and Yugoslavia; Turkey, Iraq, Iran, Lebanon, Israel, Pakistan, India, and Japan; and several colonial possessions."

The steady and consistent extension of the work of this Association means that trust and good faith are still alive in men's hearts. It constitutes an ever strengthening link between nations. And this shall always be the greatest monument to Frances Kellor.

Nature and Function of Arbitration in Contract Negotiations*

Houston Clinton, Jr.

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As far back as 1854, the Courts of the land were extending substantial recognition to the effectiveness and the validity of an arbitration award. In that year a New York Court in the case *Brazil v. Isham*, 12 N. Y. 9, made the following observation concerning the nature of arbitration awards:

"There is, or ought to be, no difference in the effect of an adjudication, as a bar to a subsequent suit, for the same cause, whether it is pronounced by judges selected by the parties or appointed by the State. In either case, every consideration of public policy requires that after the parties have been fully and fairly heard, further litigation as to the same subject matter should cease and no satisfactory reason can be assigned why a judgment, as an act by the law, should not estop the parties, and an award, which is another name for a judgment, which the parties have expressly stipulated should be final as to the subject submitted, should not be equally conclusive."

This statement of public policy is in keeping with the common law recognition of the right of parties in dispute to arbitrate their differences to finality. This right still remains in the common law of the State of Texas and has been supplemented, although in somewhat cumbersome fashion, by statutory law.

In 1895, the Legislature of the State of Texas passed certain statutes which provide for arbitration between an employer and his employees. See Article 239-249, Vernon's Annotated Civil Statutes of Texas. These statutes and the procedure set up thereunder have been severely criticized by expert commentators. See for example the recent article in the Texas Law Review by Wesley A. Sturges, Arbitration under the Arbitration Statutes of Texas, 31 Tex. Law Rev. 833.

The only purpose in mentioning the relatively ancient arbitration statute under the laws of Texas and the earlier decision by the New York Court is to point up persuasive reasons for voluntary arbitration. The court pointed out the character of finality to be accorded to an

* Address delivered on October 30, 1953 at the Conference on Labor Arbitration, sponsored jointly by the Colleges of Business Administration and Law of the University of Houston, the Houston Labor and Trades Council, A.F.L., and the Harris County Council of Industrial Organization C.I.O., in cooperation with the American Arbitration Association.

arbitration award. Thus, we have one of the most compelling reasons for arbitration in contract negotiations. That is, to put an end to the conflicting views of the parties to the collective bargaining process by using the services of a third person who is, theoretically at least, stripped of any partisanship in the dispute.

Secondly, the scheme of statutory arbitration as set forth by the Legislature of Texas emphasizes another salutary effect of voluntary arbitration. In providing for a submission agreement, Article 242 requires the parties to stipulate "that pending the arbitration, the existing status prior to any disagreement or strike, shall not be changed." Article 246 requires the preservation of the status quo and declares that "it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employees party thereto, except for inefficiency, violation of law, or where reduction of force is necessary, nor for the organization representing such employees to order, nor for the employees to unite in, aid or abet strikes or boycotts against such employer or receiver." That is to say, that the public interest is best served by a procedure whereby labor and management in controversy over the terms of a collective bargaining contract may best resolve their differences in a voluntary and peaceful way and without the trials and losses sometimes usually attending a strike or lock-out.

Of course, quite aside from the two reasons already mentioned for voluntary arbitration, the parties to the negotiations may find arbitration a convenient way to take them "off the spot" and to save face. Mr. Maxwell Copelof in his book "Management-Union Arbitration" (1948) pages 10-12 gives examples of such considerations which may be in the minds of the parties as they agree to arbitrate matters in dispute in contract negotiations. He points out that where unions are attempting to establish a uniform national policy concerning wage scales and at the outset of plant-by-plant negotiations it develops that the employer is a smaller operation and is obviously unable to meet the national pattern, the union leaders, being realistic, and keeping in mind the major interests of *their* over-all national policy, might welcome an opportunity to avoid setting a bad precedent by agreeing to the employer's position. Passing the buck to an arbitrator, then, is an easy way to get the union off of that particular spot.

Similarly, a multi-plant corporation operating on a national scale might find use of arbitration a convenient way of avoiding a pattern which unions in its other plants would insist be followed in their respective negotiations. Such use would be especially beneficial

where the plant involved in the arbitration is one with an unusual profit return.

Then too, the employer and the union might be deadlocked over an issue of union security in an area where unionism is relatively new. Or any other issue which the parties consider to be a matter of principle might have caused the deadlock. In any event, assume the company is in one of those communities where a single plant, its own, dominates the business scene. In such an instance both the company and the union would be reluctant to create a situation, through strike or lock-out, whereby the whole economic structure of the surrounding area would suffer. The easy out: settle the dispute by arbitration.

Another and more compelling reason for resort to voluntary arbitration, in the method and manner accommodating to the parties, is to avoid compulsory arbitration. Incongruous as this statement may sound, it is recognized by both management and labor alike to be true, particularly in view of recent legislative efforts in the direction of compulsory arbitration. It seems generally agreed that a procedure to which the parties are compelled to resort is distasteful both to the employer and the employees. If this be true, it behooves all parties to settle their differences peacefully and amicably. For with every outbreak of the rash of strikes and industrial disputes, some members of the Congress of the United States blow the dust off of their old compulsory arbitration bills and drop them in the hopper, declaring that the time has come to put an end to the chaos created by power-mad labor leaders. Indeed, steps in the direction of such compulsion have been hastened by writing into existing law compulsory processes for settlement of what has become known as a "jurisdictional dispute." The Taft-Hartley law, in Section 10(k), directs the National Labor Relations Board "to hear and determine the dispute." The result of such determination, absent voluntary settlement by the parties, is an order from the National Labor Relations Board determining the craft or union to which the work in dispute should be assigned.

To further demonstrate that such compulsory process is not beyond the realm of possibility, you are reminded that in May of 1947, Honorable Buford H. Jester, late Governor of the State of Texas, sent a message to the 50th Legislature regarding disputes in Public Utility Labor Management relationship. In the course of that message he stated:

"In my judgment, it is essential to the protection of the public interest that disputes between management and employees of such utilities should have required arbitrations when a suspension of essential service is threatened."

Also recall that then President Harry Truman himself advocated such a procedure with some allowances for voluntariness in invoking the procedure, in his message to the First Session of the 80th Congress in January, 1947. And be reminded that in that Congress there was introduced the Ferguson-Smith Bill to create a system of labor courts and to provide for compulsory settlement of disputes over existing contract terms. There are other straws in the wind. This subject of compulsory settlement of labor disputes and the trends toward it, are ably discussed by Mr. Jerre S. Williams in his article "Compulsory Settlement of Contract Negotiation Labor Disputes," 27 Texas Law Review 587.

Although the above reasons may seem controlling ones in support of arbitration in contract negotiations, please do not conclude that I am unequivocally in favor of such procedure. Remember that there are likewise compelling reasons on the other side. Basically, the submission of a contract negotiation dispute to arbitration is a fundamental departure from the theory and principle of collective bargaining. This is not to say that once a contract has been agreed upon, arbitration of differences weakens the principle of collective bargaining; and you will hear from Mr. Fred Schmidt of the Oil Workers International Union, CIO, about this aspect of arbitration. But certainly, it will not be disputed, that when the parties are in disagreement on a major subject, for example wages, and relinquish the determination of the controversy to a third party they are, in effect, abandoning collective bargaining. To those of us on the labor side of the docket, in the development of sound and stable labor management relationship, collective bargaining is an essential and fundamental right. It should be guarded jealously and used zealously. Relinquishment, even temporarily, of such right should be made only in the extra-ordinary situation so as to prevent a weakening of the basic principle. As Maxwell Copelof emphasizes at the beginning of the chapter entitled "Arbitrating New Contract Provisions" in his book referred to earlier:

"Rarely, if ever, is it desirable to have an entire new contract written by an arbitrator. Usually management and labor can agree between themselves on most of the major provisions of a

new contract. It is preferable that they agree on all. Arbitration of new contract clauses should be used as a last resort, and only that."

So, considering the above factors, let us assume that the parties have decided that they will arbitrate the issues on which they are deadlocked in negotiations. Between them they should agree upon the individual or tribunal to make the determination of the issues and draw up a submission stipulation for the arbitration. This submission stipulation itself should be drafted with extreme care so as to define precisely the issue and to instruct the arbitrator as to his power and authority in resolving it. Suppose the parties have proposals and counter proposals on a particular issue within which there is a wide area of disagreement. Is the arbitrator to be limited in his determination to compromising the positions of the parties within the area of disagreement, or is he to be allowed full scope in his determination even to the extent of going behind the proposal or counter proposal of a particular party? The boundaries of the authority of the arbitrator are to be settled by the parties in bargaining over the submission agreement and not by the arbitrator himself.

Having prepared a properly definitive submission agreement, the parties must select an arbitrator or Board of Arbitration. Here, with due deference and respect to the ability of the American Arbitration Association to supply lists naming usually capable and competent men to serve, it may be that the particular problem confronting the parties is one so complex and detailed in a special field as to require a specialist. For example, a wage issue dealing with piece rate pay increase which necessarily concerns time studies, production quotas, and the like, can be most confusing and perplexing. Obviously, one who has knowledge and experience with such matters may more easily and intelligently grasp the problem and work out a fair and equitable solution. So also, a lawyer or professor of law might better understand a contracting-out-of-work provision than a theologian or dean of arts and sciences, who might be chosen for a reasons-for-discharge clause. But, in any event, the arbitrator should be carefully chosen and just as carefully be advised in the submission agreement of his power and authority.

Passing these steps and securing a place to hold the arbitration hearing, the parties are now ready to present their evidence and arguments. Generally speaking, arbitration in contract negotiations will require more time, effort and evidence in the presentation. Or-

dinarily, both sides are advancing the affirmative of their respective positions concerning the issue in dispute, whereas in a contract violation case one is somewhat the plaintiff, and the other defendant. In the negotiation case, each side needs surveys, studies and testimony, usually in the form of what similarly situated parties to current and effective bargaining contracts have done. Of course, if the dispute is over wages, rates of pay, pensions, insurance, savings plans—matters of money—then statistics, comparison graphs and charts, expert witnesses are all in order and helpful.

It must be remembered that the arbitration award will be tailored to the particular case in an effort to do justice in accordance with the positions of the parties. Usually the arbitrator has no well defined, applicable precedents to guide him in a contract negotiation situation. Therefore, each side will be making every effort to justify its position on grounds of reasonableness, fairness and appropriateness. From the facts and arguments presented to him, the arbitrator must in many instances act as a guide for those who are feeling their way in the field of collective bargaining.

For example, back when the closed shop was legal, a union beginning negotiations after winning a close election demanded a closed shop provision. Management resisted any type of union security clauses but agreed to submit the issue to arbitration. There the union contended a closed shop: would eliminate rival organizing activities of another union which had previously sought recognition, would bring about amity and solidarity among the employees and between them and management, would result in better shop discipline, would wipe clean the sordid picture, so painted by the union, of suspicion and mistrust claimed to have existed in the past. On the other hand, the company pointed out: the union had won the NLRB election by a small margin, the large minority should not be compelled to join the union against their obvious wishes under pain of losing their jobs, management should not be required to increase the union's membership, something the union itself was unable to do.

During the hearing, however, the arbitrator was empowered to conduct elections among the employees on the closed shop clause, to keep the results to himself, and, based upon those results, to determine if a closed shop would be to the best interests of the parties. The elections were held and resulted in overwhelming majority for a closed shop. However, apparently recognizing some merit in the company's position, the arbitrator wrote a security clause providing only for a union shop and check-off.

In such a way arbitration attempts to resolve the differences of the parties who in collective bargaining are unable to settle them alone, and who, seeking to avoid industrial strife or for other reasons, agree to allow a neutral to write the contractual provision in dispute. Unfortunately, arbitration has no sanction to obtain enforcement and require compliance with its award, once made, so that the original purpose in submission may remain unfulfilled. It is this contingency and possibility that calls for legislation establishing a simple, rapid and inexpensive procedure for effecting compliance with duly authorized and considered awards.

If as the New York Court stated "public policy requires that after the parties have been fully and fairly heard, further litigation as to the same subject matter should cease, and no satisfactory reason can be assigned why . . . an award . . . which the parties have expressly stipulated should be final as to the subject submitted should not be equally conclusive," then our own legislature should take prompt steps to insure and guarantee compliance with awards issued after free and voluntary submission to arbitration.

A Lease Agreement of the newly-created New York City Transit Authority, comprising all the surface, subway and elevated transportation facilities of the city, except for nine privately-owned bus lines, contains an arbitration clause in Art. XIV(1) which reads as follows: "In the event of any controversy arising out of or connected with this Agreement concerning any question of fact, such controversy shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association." The independent Transit Authority will operate the transportation system on a self-sustaining basis for ten years. The Lease Agreement of June 1, 1953, is a complicated document providing for transfer of property, payment of funds, inspection of accounts, protection of rights of the parties, and the specific performance of obligations by both the City and the Transit Authority.

Rules of Contract Interpretation in Labor-Management Arbitration*

Amzy B. Steed

The Texas Company, Legal Department, New York

Arbitration is a judicial process and the arbitrator is a judge. Any doubt respecting this is dispelled by the fact that the courts will hold the arbitrator accountable to applicable rules of law in determining whether his award should be set aside as exceeding his jurisdiction under the contract. In interpreting and applying the contract, the arbitrator's function thus is to adjudicate—not conciliate or negotiate. Generally, the parties' contract provides that he shall have no power to add to, subtract from, or modify any provision of the agreement. Such prohibitions are designed to keep the arbitrator from crossing the boundary line between interpretation and legislation; and, if adhered to, will render his award invulnerable to a judicial attack that he exceeded his jurisdiction. In ultimate analysis, therefore, the arbitrator's job in contract interpretation simply is to answer the question: *What does the contract mean when applied to the facts before me?* Guides to assist him in finding the answer abound in rules of construction developed in courts of law and applied by arbitrators down through the years. Like the parties to a lawsuit, the employer and union representatives in an arbitration proceeding owe their principals and the arbitrator the duty of bringing these rules to the arbitrator's attention as they apply in the particular case. Because of their critical significance, I think it well to outline a few of the more important ones, although they will all be recognized as elementary:

1. Rule of "pre-existing management rights":

Like the Constitution of the United States which grants the Federal Government certain powers and reserves those not so granted to the states, the labor agreement is simply a grant of powers and the employer retains all powers to operate his business not ceded away in the labor agreement. This is sometimes called the doctrine of "pre-existing" management functions.

Therefore, the arbitrator's first inquiry should be: Does the contract, either expressly or by necessary implication, deal with the question before him? If it does not, he should summarily reject the grievance for, to do otherwise, would require that he rewrite the parties' agreement rather than apply its terms. If, on the other hand, the con-

*From an address delivered at the Conference on Labor Arbitration at the University of Houston, Houston, Texas, on October 30, 1953.

tract deals with the question before him, he must then proceed to determine the meaning of the language used in the contract.

2. *Parol evidence will not be admitted to vary the plain language of the contract:*

If the language is plain and unambiguous, its meaning must be determined by its contents alone and a meaning cannot be given it other than that expressed, for again, to do otherwise would require that the arbitrator rewrite the contract. An easy illustration: if the contract provides for six paid holidays in clear and unequivocal terms, it would be error to add a seventh such holiday.

If the language of the contract is not so clear as to admit of only one meaning, then resort must be had to extrinsic matters as aids in determining what the parties had in mind. For example: the contract may say that "in emergencies," the employer may do thus and so. Obviously, "emergencies" is not a word of art with a fixed connotation. To develop its meaning in the situation before him, the arbitrator must look outside the contract.

3. *Negotiating history may be used in determining meaning of ambiguous language:*

The arbitrator should first examine the negotiations which led to the writing of the contract in much the same way as the courts search legislative history when interpreting a statute. He will look to the setting in which the negotiations took place, the problems which the parties sought to solve, and any oral statements which were made at that time. He may consider not only the negotiations leading to the contract being interpreted but also those leading to prior contracts, when competent evidence thereof is presented. For example, if the history of negotiations should reveal that one of the parties had made several unsuccessful attempts to change the disputed contract provision, it might be concluded that, by retaining that provision, both the company and the union meant to reject the unsuccessful party's present interpretation. This principle was stated as follows recently by Judge Wilson, United States District Judge for the Northern District of Texas: "Even if doubt existed on the point, that doubt would dissipate upon giving consideration to the negotiations which preceded the execution of the contract. The Union requested the inclusion of a contractual provision limiting the length of the work week. The Company rejected that provision. . . . If there were any doubt otherwise as to the proper interpretation of the contract, these circumstances and the refusal of the Company to accept the clauses suggested

by the Union would be of great value in determining the intent of the parties. Refusal to adopt suggested amendments is held to be of significance even when interpreting doubtful provisions of a statute. *Manhattan Properties v. Irving Trust Co.*, 291 U.S. 320, 335." *Texoma Natural Gas Co. v. Oil Workers' International Union, Local No. 463*, 58 F. Supp. 132, aff'd. 146 F. 2d 62 (C.C.A. 5).

4. *Past practice of the parties may be used in determining meaning of ambiguous language:*

Past practice may also be accepted by the arbitrator as establishing the intent of a provision which is so ambiguous or so general as to be capable of different interpretations, although it will not be used to give meaning to a provision which is clear and unambiguous. In other words, if past practice conflicts with an express provision of the agreement the clear language of the agreement will govern. This is so even though the arbitrator believes that on the basis of equity the past practice should govern.

5. *Other miscellaneous rules:*

When the meaning of the contract cannot be found by applying the above rules, there are still others which are frequently enunciated when making the choice between possible interpretations. Words are given their common meaning; and, if the language used is identical with that of a statute, the construction of the language will often depend upon prior interpretations of the statute. The contract is considered as a whole. The clear meaning of a term in one clause may determine its meaning in another which, when viewed alone, is obscure; and if it appears that one interpretation will render other clauses nugatory, it will be rejected where possible. Where one of the two possible interpretations would result in requiring an illegal act, it will be presumed that the parties did not intend an illegal bargain. The legal maxim "to include one thing is to exclude all others" has been adopted, and arbitrators will generally hold that specific provisions supersede those which are general.

Special considerations are involved in disciplinary cases. In the first place, the arbitrator generally has broad authority to determine whether the disciplinary penalty was properly imposed. Correctly viewed, this authority begets a serious responsibility in its exercise. Then, too, disciplinary cases usually turn on questions of fact which are to a large extent determined by the weight and credibility accorded to the testimony of witnesses and to the documentary evidence offered by the parties. In arriving at the truth in such a case, the

arbitrator must consider whether conflicting statements ring true or false; he will note the witnesses' demeanor while on the stand; and he will credit or discredit testimony according to his impression of the witnesses' veracity.

The goal of the parties is to help the arbitrator reach the correct decision. When this goal is not realized, the result can be most undesirable for the losing party, who might well be deprived of some right or function that it would not have voluntarily surrendered in negotiations. And sometimes the decision can be adverse to the interests of both parties and, instead of settling one dispute, create another. In effect, the losing party could find himself similarly situated to the prize fighter who, after absorbing a terrific beating, returned to his corner at the end of the fifth round to be inspiringly told by his manager: "You're going great, Joe; he hasn't laid a glove on you." To which Joe responded: "I don't know about that. If he hasn't laid a glove on me, that referee is certainly beatin' heck out of me."

"Unemployment Insurance Benefits and Back Pay Awards," an article by Professor Herman A. Gray in the *Arbitration Journal* vol. 8 p. 114, was commented upon in the New York Law Journal of December 29. Its issue of January 14, 1954 carried a note by Ralph Shapiro of New York as follows: "The soundness of Professor Gray's suggestion that the arbitrator should not concern himself with such a credit is underscored by the decision in *Matter of Stewart (Corsi)*, 279 App. Div. 500. In that case an arbitrator had awarded back pay to wrongfully discharged employees. During the pendency of the arbitration hearings and proceedings to confirm the award the affected employees applied for and received unemployment insurance benefits. After payment of the award the industrial commissioner demanded repayment of the benefits received by the employees for those weeks to which the back pay under the arbitrator's award was applicable. The Appellate Division unanimously affirmed the determinations below that the employees were 'retroactively' ineligible for benefits and directed repayment thereof. If the arbitrator had credited the employer with unemployment insurance benefits the employees, under the law as it now stands, would have been doubly penalized."

Use of Arbitration in Overseas Trade*

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Competitive trade is founded on the commercial contract. This contract, the result of bargaining between the buyer and seller, contains the express terms of the bargain such as the description of the goods, quantity, price and date of delivery. In addition there are, under the system of law applicable to the contract, implied terms such as "the goods must be of merchantable quality." It is the essence of good business that the terms fixed by a contract should be definite. For, although the bargain is made so as to be as satisfactory and profitable to each party as the state of the market permits, it is essential for the contract to be carried out on the agreed terms to ensure the successful conclusion of business. There are always disputes between sellers and buyers whether they be merchants and manufacturers in the same country or whether they be importers and exporters who deal with each other in the different markets of the world. Controversies arise in regard to shipments and deliveries, inferior merchandise, as a result of differing interpretations of foreign trade definitions and other contract conditions such as marine insurance, terms of payment, foreign exchange regulations and many other technical details that enter into a foreign trade transaction from the time the exporter receives an order and the importer accepts the goods.

Questions relating to the interpretation and fulfillment of a contract may be taken to a court of law for decision. But business controversies that are taken to courts of law are usually costly and frequently bitter. Court lists are heavily crowded and some time usually lapses before commercial cases are finally adjudicated. It is often considered that a court hearing tends to favour the nationals of the country where the case is adjudicated, with the result that suspicions and animosity are created in the minds of peoples of different nationalities who grow to doubt the fairness of the treatment they will receive from the courts of other countries. In addition, there is no body of international commercial law and different laws and different standards make it difficult for international merchants to have a clear understanding of the ways in which their rights and obligations will be interpreted.

Centuries ago the early traders learned that they could obtain a fair and speedy adjudication of their disagreements by arbitration. They learned that the submission of a disagreement to a disinterested

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third party could give them a speedy and fair decision and that their controversies could be so resolved that they could continue their dealings with each other to their mutual advantage. Commercial arbitration has many advantages over legal proceedings. In addition to its cheapness, speed and friendly atmosphere the arbitrator usually has a knowledge of the trade and applies this knowledge to the settlement of the dispute with a complete appreciation of business practice. He may visit factories and warehouses to inspect goods and form a sound opinion on their quality. The judge, on the other hand, is largely dependent on the witnesses, whose testimony may often conflict.

The procedure of arbitration is introduced into a commercial contract by means of the arbitration agreement. The arbitration agreement usually consists of an arbitration clause in the contract, together with the rules of some society such as a produce exchange or chamber of commerce. The arbitration clause is an agreement in a contract to the effect that any disputes shall be submitted to arbitration in accordance with the rules of the society.

It is advisable for firms to employ an arbitration clause in their contracts. The non-existence in a contract of such a clause does not, of course, preclude disputants from going to arbitration as they can sign a form of arbitration agreement after a dispute has arisen, but the presence of the clause brings definite advantages. For instance, where an appropriate clause exists, whatever dispute may arise is automatically referred to the stated tribunal on a request for the appointment of an arbitrator by either party. Quite often the existence of the clause is the means of bringing about a settlement without recourse to arbitrators. A trader creating a dispute on grounds which are of a doubtful nature might not care to have the matter brought before a businessman for adjudication. With an arbitration clause in the contract he faces the choice of having this happen or of making an acceptable settlement.

The submission is the procedure adopted to place the dispute in the hands of the arbitrators and its form would be determined by the rules. The arbitrators are generally chosen by the parties. Where reference is to a single arbitrator, the rules generally make provision for the nomination of the arbitrator by a third party when the parties to the dispute cannot agree on a nominee. Where each party appoints an arbitrator, the rules make similar provisions for the appointment of an umpire when the arbitrators cannot agree.

After hearing the case and forming his conclusion the arbitrator states his decision in the form of an award. He may obtain a court's

advice on any points of law by stating a case for decision of the court. The award, when made, is generally binding on the parties and enforceable with the aid of the law. It can generally only be set aside as a result of evidence being given that the arbitrator was not impartial, or if an error of law appears on the face of the award. But, except in these exceptional circumstances, the award cannot be challenged and the arbitrator's decision is final.

Commercial arbitration is commonly used in the United Kingdom, particularly in certain trades. Chambers of Commerce encourage the use of arbitration procedure and many of them provide facilities for the settlement of disputes by this method.

The London Court of Arbitration, formed in 1892, is an impartial body, administered by the Corporation of London and the London Chamber of Commerce. Its function is to appoint arbitrators to settle disputes which may under the law of England be submitted to arbitration. Its services are available to any person, firm, company or organisation of any nationality.

The Tribunal of Arbitration of the Manchester Chamber of Commerce also offers services of a similar nature as do the larger chambers of commerce in Scotland.

Many specialist commodity associations offer arbitration facilities which are extensively used. These include:—

London Corn Trade Association; Incorporated Oil Seed Association; London Rubber Trade Association; London Fur Trade Association; London Spice Trade Association; British Wool Federation; Liverpool Seed Cake and General Produce Association.

United States Federal law provides that when parties in an arbitration agreement agree to a judgment being entered on the award then the award, when made, may be confirmed by the Court and will be enforceable as a judgment. Provision for automatic enforcement of awards also exists in the laws of many of the States.

The American Arbitration Association is a non-profit non-partisan organisation which maintains a panel of 12,000 arbitrators in 1500 cities of the United States. Its Rules of Procedure are applicable to any kind of controversy that the parties submit, whether local, national, domestic or international in character, except those specifically excluded by law from submission to arbitration. The Association also offers international traders a choice of arbitration clauses and the services necessary to put them into effective use in territories where its co-operating organisations operate. In addition it recommends a Standard International Trade Arbitration clause for use in territories

where no arbitration arrangements have been concluded. Special arrangements for international arbitration have been made by the Association with the London Court of Arbitration, Manchester Chamber of Commerce and Associated Chambers of Commerce of Australia.

The Inter-American Commercial Arbitration Commission conducts arbitrations on disagreements that businessmen in the Latin American Republics have with each other and with United States businessmen. The Canadian-American Commercial Arbitration Commission adjudicates on disagreements between Canadian and United States parties.

There is also a number of specialised tribunals, typical of which is the General Arbitration Council of the Textile Industry, of which 15 associations are members. The arbitrators are qualified by expert knowledge and market experience to decide scientifically the highly technical points of textile manufacturing and marketing which are likely to be involved in disputes. In practically all sales notes in the United States the standard arbitration clause of this Association is used. This clause is as follows:

"Any controversy arising under, or in relation to, this contract shall be settled by arbitration. If the parties are unable to agree respecting time, place, method or rules of the arbitration, then such arbitration shall be held in the City of New York in accordance with the laws of the State of New York and the rules then obtaining of the General Arbitration Council of the Textile Industry and the parties consent to the jurisdiction of the Supreme Court of said State and further consent that any process or notices of motion or other application to the Court or a Judge thereof may be served outside the State of New York by registered mail or by personal service, provided a reasonable time for appearance is allowed."

The method of instituting an arbitration proceeding is for a letter to be addressed by either party to the Council, enclosing a copy, either of the contract containing the arbitration clause, or the submission agreement and setting forth a brief description of the particular points that are in dispute and a statement of the relief sought. Upon receipt of this, the Council immediately advises the other party and requests a similar statement from him. The Council then asks each party to appoint an arbitrator and the two arbitrators so appointed to agree upon a third, the latter becoming the Chairman. Occasionally disputants agree on a single arbitrator, but three are more usual. On the date set for the hearing each party, who may be accompanied by counsel if he desires, describes to the arbitrators, in the presence of the opposing party, his version of the controversy. After the parties have

been excused, the arbitrators review the evidence and agree upon the award to be entered. Over 90 per cent. of awards have been unanimous, although the agreement of two out of three arbitrators is all that is required.

The Indian Arbitration Act, 1940, regulates arbitration and recognises it as a valid method of settling disputes. Parties can agree, by a written agreement, to submit present or future differences to arbitration, whether the arbitrators are named therein or not. They can also agree to refer disputes to arbitrators to be appointed by a party designated in the agreement. A Court of law may interfere with the selection of arbitrators only when, by the agreement, consent of parties is required and they are not agreed on the appointee, or on misconduct of an arbitrator, or where a new arbitrator requires to be appointed. An award can be enforced in a Court of Law which pronounces judgment in terms of the award, unless the Court modifies or remits the award under certain circumstances.

Arbitration machinery dealing with cases arising in particular commodities and branches of trade has developed with particular success. Examples are the tribunal under the East India Cotton Association, Bombay, the Bengal Chamber of Commerce, Calcutta, facilities for arbitration in the jute industry and for disputes of a general nature, the Bombay Millowners' Association, Grain and Oil Seed Merchants' Association, Bombay, and Indian Produce Association, Calcutta. One of the conditions for being a member of the Bombay Oilseeds and Bombay and Calcutta Bullion and other commodity Exchanges is that all disputes arising out of their contracts will be settled by arbitration. All important Chambers of Commerce throughout the country have arbitration tribunals empowered to deal with all types of disputes. In the case of overseas trade, arbitration clauses in Indian contracts for various reasons generally refer to foreign tribunals.

The International Chamber of Commerce has established a court of arbitration in Paris to which merchants and manufacturers from all parts of the world resort for the settlement of their disputes. Other well-known arbitration facilities are provided by the Netherlands Arbitration Institute and by Chambers of Commerce in New Zealand, South Africa, Milan, Western Germany, Istanbul, Japan and Manila.

Arbitration procedures in Australia are governed by the arbitration laws of the various States, of which the Arbitration Act, 1902, of New South Wales is typical. That Act provides that where there is a written agreement to submit present or future differences to arbitra-

tion, awards made in consequence of such agreements are final and binding on the parties and are, on leave of the Supreme Court or a Judge being obtained, enforceable in the same manner as a judgment of the court. If the findings constitute a breach of law or are improperly procured, the courts have power to set aside the award and there is power to remit an award to the arbitration for reconsideration. Otherwise the courts will not interfere with the findings of the arbitrator or questions of fact.

Local Chambers of Commerce and trade organisations provide facilities for arbitration and there is room for further use of the available procedures in the settlement of local disputes and for the development of further facilities for the settlement of disputes between importers and exporters, where one party is abroad.

The arbitration clause agreed to by the Associated Chambers of Commerce of Australia and the American Arbitration Association for insertion in trading contracts between parties in Australia and the United States is as follows:—

"Any dispute or claim arising out of or relating to this contract or any breach thereof shall be settled by arbitration. If the arbitration is held in the State of (here insert the name of the State in the Commonwealth of Australia) the construction, validity and performance of this contract shall be governed by the law of the said State and any such dispute or claim shall be submitted to the Arbitration of (here insert the name of the Chamber) under and in accordance with the rules for Commercial Arbitration within the British Empire with minor alterations to suit Australian conditions as approved and adopted by the Chamber of Commerce in Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney, and confirmed by the Associated Chamber of Commerce of the Commonwealth of Australia. If the arbitration is held in the United States of America it shall be conducted under the rules of the American Arbitration Association. In the event that the parties have not designated the locale of the arbitration and are unable to agree thereon, either party may apply to the International Law Association in London to decide the locale, and its decision shall be accepted by the parties thereto."

The following example of an actual case of arbitration illustrates the important part it plays in overseas trade:—

An Australian shipper had contracted with a well-known New York fur importer (with whom he had done business for years) for the purchase of 1600 raw Australian opossum skins. The negotiations which led up to the final order consisted of one telephone call

from Sydney to New York and a few subsequent cable and letter exchanges, which detailed the quality of the goods to be shipped. A table showing the assortment of skins was sent by air mail to the New York buyer. No written contract, however, existed between the parties.

When the goods were delivered to New York, the importer considered that they did not come up to the description given over the phone and in his view did not represent proper value for the price paid. He requested an arbitration hearing, which was arranged. The seller agreed to present his case by letter and on the evidence of the skins shipped from Sydney.

The arbitrators, who were experts in this field, inspected every one of the 1600 skins and found that they accorded with specifications. They refused to adjudicate on the question of "good value" as they knew this term in the fur trade is extremely subjective and what might be good value to one buyer might be very poor value to another buyer. The decision therefore went in favour of the Australian seller.

The existence and use of commercial arbitration procedures in the settlement of trade disputes is an indication of an advanced business community. Australian business associations are ready to serve their members. Why not talk it over with your business association?

Promotion of Fair Advertising Practices in the International Field

Marie C. Psimenos

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The world of today has seen higher standards of living brought about by competition continuously seeking to keep its products in favor with the consumer, leading the public to expect better qualities, better performances. Manufacturers know that such higher standards at economic consumer prices can only be achieved through large scale production. It is in this sphere—the creation of that wide consumer demand which alone can support large scale production—that advertising has proved to be such a powerful factor in the marketing operation, and incidentally an essential element in a system of free enterprise.

However, in far too many instances, advertising is regarded by the public as a necessary evil. This public misconception stems, as most misconceptions do, from the grain of truth that sometimes lies within the contention. Advertising must not exploit the credulity and gullibility of the public. Advertising must discipline itself to avoid falling into this error.

After all, the function of advertising is to disseminate information about goods; if such information is inaccurate, not only does the advertiser let himself down but the consumer, preoccupied with the business of living his or her own life, is misled and disappointed. Furthermore, false advertising claims woefully vitiate the canons of fair competition and result in bringing a profession, which has established itself as an essential and reliable tool of management, into disrepute. Finally, there is the aspect of the relationship between advertising agency and medium—a relationship which must, if it is to be healthy and based on mutual respect, rest on a foundation of fair advertising practices.

Hence the valuable steps taken on the national level by the various professional associations concerned—within the limits of their sovereignty—to ensure that advertising practices should be such as to conform, not only to national laws but also to national feelings on the moral and esthetic plane.

But, what works, what is acceptable, what is valid in one country is not necessarily workable, acceptable or valid in another. Indeed, to dogmatize about a certain course of action, from the standpoint of

tried and proved experience in one particular country and to expect its international adoption is to be both naive and unrealistic.

It is with these thoughts in mind that the International Chamber of Commerce, as a body grouping amongst others, advertisers, agents and media, has approached the problem of advertising ethics from an essentially flexible point of view.

The Code of Standards of Advertising Practice, in its present version as approved by the I.C.C. at its Quebec Congress (June 1949), makes no attempt to regulate the whole field of the economic and social functions of advertising but merely sets forth principles which have stood the test of many years of experience. It constitutes a statement of the minimum of ethics to be observed in advertising practice, first vis-à-vis the consumer, second between advertisers and thirdly between agencies and media. It is on that score that the rules of advertising established by the I.C.C. have already been officially adopted by 67 professional associations in thirteen countries: Belgium, Canada, Denmark, France, Germany, India, Italy, Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States.

The Code is more than a pious expression of hope and a list of strictures. It is, in effect, a sanction, for non-adherence to it can very quickly stop the appearance of advertising which offends the carefully thought out schedules of the Code. This is insured through the International Council of Advertising Practice of the I.C.C., a body which is fully representative of the three interests involved in advertising.

As a matter of principle, the Council will not act on cases arising between residents of the same country unless specifically requested to do so as an international arbiter or in the absence of a competent national body.

Any person or body affected in a case of unfair advertising may seek the intervention of the Council, doing so in writing and supporting the request with a statement of the case. This request may be made either through the I.C.C. National Committee of the plaintiff's country, or directly to the Council (38, Cours Albert Ier, Paris 8°).

The request is first considered by a screening body known as the Committee of Investigation of the International Council of Advertising Practice of the I.C.C. The members of this Committee are all resident in Paris, and this allows them to meet at very short notice, whenever action from the Council is sought; they are sworn to secrecy as are also the members of the Council.

The Committee decides, on the basis of the Code, whether the request is a matter for the Council. When it is of the opinion that the case falls within the competency of the Council, the Committee endeavors to settle the dispute by conciliation. If conciliation fails, the Committee states, whenever necessary, those items concerning which supplementary information should be required from the parties concerned and the case is transmitted to the Council.

When the Council meets, the parties are entitled to appear personally or by representative. If no settlement of the case can be reached by conciliation, the Council gives a written opinion in accordance with a majority vote of its members present, which is notified to the parties.

A French Committee for the Development and Improvement of Arbitration was founded in Paris on November 10, 1953. Its President is Professor Henri Battifol of the Law Faculty of the University of Paris, the leading French authority on conflict of laws. Among the Honorary Presidents are Charles Fremicourt, First President of the Court of Cassation, Dean Georges Ripert, Member of the Institute, and Professor Georges Scelle, member of the International Law Commission of the United Nations, who prepared a Draft on Arbitral Procedure (see *Arb. J.* 1952 p. 165). Among the Vice Presidents are two members of the Paris bar, well-known in the arbitration movement: Charles Carabiber, recently appointed co-Chairman of the Court of Arbitration of the International Chamber of Commerce, and James Paul Govare, Chairman of the Committee on Commercial Arbitration of the International Law Association. The Secretary General is Jean Robert, Esq., author of a recent treatise on civil and commercial arbitration in both the domestic and international fields. This establishment of the French Committee is indeed a remarkable sign of revived interest in the promotion of the use and knowledge of commercial arbitration, which will be welcomed far beyond the boundaries of France.

The U. S. Supreme Court on Stock Exchange Arbitration

On December 7, 1953, the Supreme Court of the United States rendered a decision in *Wilko v. Swan*, 74 S. Ct. 182, which reversed the majority decision of the Court of Appeals for the Second Circuit of January 15, 1953, 201 F. 2d 439 (digested in *Arb. J.* 1953, p. 45, and commented upon in 53 Columbia L. R. 735, 41 Georgetown L. J. 565, 66 Harvard L. R. 1326, and 62 Yale L. J. 985).

A customer brought action against partners in a security brokerage firm to recover damages under sec. 12(2) of the Securities Act of 1933, alleging that false representations were made as to securities which caused a loss at their sale two weeks later. The respondent moved to stay the trial of the action, in view of an arbitration clause in the margin agreement signed by the customer, which provided for arbitration "pursuant to the Arbitration Law of the State of New York, and under the rules of either the Arbitration Committee of the Chamber of Commerce of the State of New York, or of the American Arbitration Association, or of the Arbitration Committee of the New York Stock Exchange or such other Exchange as may have jurisdiction over the matter in dispute, as I may elect."

The question arose whether the agreement to arbitrate future disputes deprived petitioner of the advantageous court remedy afforded by the Securities Act, whereby the seller is made to assume the burden of disproving responsibility. Art. 14 of that Act further declares void "any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision" of the Act. The Court held that the agreement to arbitrate future claims arising under the Securities Act of 1933 was unenforceable, being the kind of "provision" which cannot be validly waived. The majority decision said at page 185:

"The United States Arbitration Act establishes by statute the desirability of arbitration as an alternative to the complications of litigation. The reports of both Houses on that Act stress the need for avoiding the delay and expense of litigation, and practice under its terms raises hope for its usefulness both in controversies based on statutes or on standards otherwise created. This hospitable attitude of legislatures and courts toward arbitration, however, does not solve our question as to the validity of petitioner's stipulation by the margin agreements, set out below, to submit to arbitration controversies that might arise from the transactions"

and at page 188:

"Two policies, not easily reconcilable, are involved in this case. Congress has afforded participants in transactions subject to its

legislative power an opportunity generally to secure prompt, economical and adequate solution of controversies through arbitration if the parties are willing to accept less certainty of legally correct adjustment. On the other hand, it has enacted the Securities Act to protect the rights of investors and has forbidden a waiver of any of those rights. Recognizing the advantages that prior agreements for arbitration may provide for the solution of commercial controversies, we decide that the intention of Congress concerning the sale of securities is better carried out by holding invalid such an agreement for arbitration of issues arising under the Act."

The dissenting opinion of Justice Frankfurter in which Justice Minton joined refers in the note on page 189 to the rules of the American Arbitration Association available to the plaintiff under his contract and states as to the procedure for the selection of arbitrators the following: "The Association submits a list of potential arbitrators qualified by experience to adjudicate the particular controversy. In the City of New York, the list would be drawn from a panel of 4,400 persons, 1,275 of whom are lawyers. Each party may strike off the names of any unacceptable persons and number the remaining in order of preference. The Association then designates the arbitrators on the basis of the preferences expressed by both parties. See 'Questions and Answers,' Pamphlet of American Arbitration Association. In short, those who are charged to enforce the rights are selected by the parties themselves from among those qualified to decide."

Said the minority opinion further at p. 190: "We have not before us a case in which the record shows that the plaintiff in opening an account had no choice but to accept the arbitration stipulation, thereby making the stipulation an unconscionable and unenforceable provision in a business transaction. The Securities and Exchange Commission, as *amicus curiae*, does not contend that the stipulation which the Court of Appeals respected, under the appropriate safeguards defined by it, was a coercive practice by financial houses against customers incapable of self-protection."

The decision holds only that agreements to arbitrate future disputes would be unenforceable when such controversies are covered by the Securities Act of 1933. The limited effect of the decision thus does not impair the obligation to arbitrate ordinary matters arising between broker and customer. It has been suggested that consideration may be given to an amendment to section 14 of the Securities Act of 1933 to the effect that "An agreement to arbitrate shall not be deemed a waiver."

REVIEW OF COURT DECISIONS

THIS review covers decisions in civil, commercial and labor-management cases, arranged under the main headings of: I. *The Arbitration Clause*, II. *The Arbitrable Issue*, III. *The Enforcement of Arbitration Agreements*, IV. *The Arbitrator*, V. *Arbitration Proceedings*, VI. *The Award*.

I. THE ARBITRATION CLAUSE

A bill of lading incorporated all provisions of a charter party "including the arbitration clause." That clause provided for arbitration in London of all disputes arising out of the contract, subject to the following conditions: "Any claim must be in writing and claimant's arbitrator appointed within three months of final discharge [of cargo] and where this provision is not complied with, the claim shall be deemed to be waived and absolutely barred." The party failed to initiate arbitration within the three months period, and applied to the Queen's Bench Division in London for an extension of time for making a claim and for the appointment of an arbitrator, but the British Court refused this application, and no appeal was taken within the required time. The shipper instituted libel in rem against the carrier for the shortage of, and damage to, a shipment of rice. In dismissing the libel, the court stated that "implicit in the English court's denial of the application for an extension of time is that it regarded the prescribed limitation as reasonable upon all the facts. . . . It follows that the limitation may not be condemned as unreasonable. There is no sound reason why such a limitation, if valid as against the maintenance of a suit, should not equally be upheld as to arbitration. The bill of lading expressly declares that if the provision is not complied with, the claim is deemed 'waived and absolutely barred.' It is part of the arbitration clause itself and this clause must be accorded the same effect as any other provision of the contract. *Son Shipping Co. v. De Fosse & Tanghe*, 2d Cir., 199 F. 2d 687. In the latter case there is a clear implication that the parties may by agreement expressly limit the time within which arbitration may be demanded." *Government of Indonesia v. The General San Martin*, 114 F. Supp. 289 (S.D. New York, Weinfeld, D.J.).

Accounting for a venture between play authors and producers was not given or sought since 1938. Such attitude, however, does not prevent the arbitration of disputes under an agreement providing for arbitration "in accordance with the arbitration laws of the State of New York . . . and the rules and regulations of the American Arbitration Association." The court said that it must assume "that the arbitrators will proceed in accordance with law (*Matter of Lipschutz v. Gutwirth*, 304 N.Y. 58). Arbitration and arbitrators have no right and no duty to act in any field which would not be a proper one for the activities of the court for which arbitration is made a substitute. Here, for reasons not explained and not apparent, all parties have rested on their oars since 1938. No accounting of any kind has been had; no action or arbitration proceeding has been brought up to the inception of this proceeding. The obligation of each party is a contractual one and, as a consequence, the only matters now justiciable under this agreement are those that transpired in the six years

immediately prior to the bringing of this litigation. The six-year statute of limitations controls. Accordingly the matter is referred to arbitrators and the parties are directed to proceed to select such arbitrators." *Hammerstein v. Shubert*, N.Y.L.J., October 14, 1953, p. 740, Cohalan, J.

A collective bargaining agreement between the New York Furniture Merchants Association and a union containing an arbitration clause provided that "nothing in this agreement shall prevent the Association from acquiring new members who shall not, however, come within the terms of the contract." Firms who became members of the Association after the execution of the agreement claimed that the union had orally waived the excluding provision of the collective bargaining agreement and corroborated this allegation by reference to later correspondence. The union not only denied ever receiving the correspondence, but contended that it dealt with these firms as individual employers and on conventional union-employer matters and not through the Association. An order to proceed to arbitration was modified on appeal since a substantial issue was raised as to whether the petitioners were within the terms of the collective bargaining agreement. The request of the union for trial by jury of the issue as to the making of the contract of arbitration was granted, pursuant to Sec. 1450 C.P.A. *Fineman v. Korman*, 202 App. Div. 937, 125 N.Y.S. 2d 843.

Employees engaged in production of goods for subsequent sale in interstate commerce and incidental plant maintenance are not to be considered within a class of "workers engaged in interstate commerce" within the meaning of Art. 1 of the Federal Arbitration Statute which exempts from its application contracts of employment of such workers. The U. S. Court of Appeals, Third Circuit, in reversing an order which had denied a stay of an action of the employer for breach of a no-strike clause of the collective bargaining agreement pending arbitration, said: "The defendant is entitled to a stay of proceedings under Section 3 of title 9, United States Code, if the collective bargaining agreement between the parties properly construed and applied, provides for arbitration of the issues raised by the complaint and if the defendant is itself not in default in proceeding with such arbitration." The court mentioned that the application of Sec. 3 made a consideration unnecessary as to whether specific performance of the arbitration clause could be sought under Sec. 301 of the Taft-Hartley Act, referring to "the well considered opinion" in *Textile Workers Union of America, CIO v. American Thread Co.*, 113 F. Supp. 137 (digested in *Arb. J.* 1953 p. 101). *Tenney Engineering, Inc. v. United Electrical Radio & Machine Workers of America, (U.E.) Local 437*, 207 F. 2d 450 (U. S. Court of Appeals, Third Cir., Maris, C. J.; Biggs, Chief Judge, concurring and McLaughlin, C. J., dissenting).

An arbitration clause in a margin agreement was considered unenforceable since such a clause is a stipulation within the meaning of sec. 14 of the Securities Act of 1933, which voids any waiver of the remedies by action in a judicial forum. The impact of this decision is considered in a statement appearing in the *Arb. J.* 1953 p. 197. *Wilko v. Swan*, 22 U. S. Law Week 4044 (U. S. Supreme Court, December 7, 1953).

When evidentiary facts are set forth raising the issue of the making of the agreement, a substantial issue as to the making of the contract is involved, and the court is required to stay the arbitration under sec. 1458 (2) C.P.A., and to direct an immediate trial of the issue. *Matter of Dumas*, N.Y.L.J., December 2, 1953, p. 1298, Norton, J.

II. THE ARBITRABLE ISSUE

Operation of a partnership after its termination and transfer of control of its funds to creditors is not an arbitrable issue when the agreement specifically provided for the method of dissolution at the termination of the partnership, even when a broad arbitration clause applies to "any other matter, cause or thing whatsoever not herein otherwise provided for." *Bank v. Eichler*, N.Y.L.J., July 21, 1953, p. 113, Corcoran, J.

An order form providing for arbitration was prepared by the seller and confirmed by separate writing. A dispute arose as to the finality of the agreement; the buyer claimed that by oral arrangement it was made conditional upon his success in marketing the merchandise and that within fifteen days of receipt of the merchandise he discovered his inability to use it. The offer of return was rejected. The court held the claim in dispute not arbitrable, as not "arising out of the contract." Nevertheless, a motion to stay proceedings pending arbitration was granted. Since there was no dispute as to the existence of the contract as written, arbitration may be had for all disputes including enforcement of payment but excluding the issue that the order was not final and binding. *Mack Sepler, Inc. v. Herman Kritcher Co., Inc.*, N.Y.L.J., August 3, 1953, p. 178, Brady, J.

A dispute arose as to whether a new category of employees known as "service truck salesmen" are covered by a collective bargaining agreement, to which the union was bargaining agent of the company's deliverymen. While the union contended the employees in question were in fact deliverymen, the company maintained that they were salesmen. The court considered the question arbitrable "accurately falling within the category of disputes 'concerning the application' of the contract." *Kraft Foods Co. v. Coughtry, as President of Milk, Ice Cream Drivers and Dairy Employees' Union, Local No. 787, IBT-AFL*, 21 Labor Arbitration 597 (New York Supreme Court, Albany County, Schirick, J.).

Severance pay for employees who are not discharged for a just cause was provided in a collective bargaining agreement. The contract also provided that all disputes regarding discharge which cannot be settled between the president of the employees' association and the management were to be referred to a Joint Standing Committee, and if this Committee could not reach a unanimous agreement within ten days, a five-member board of arbitration should be formed to settle the dispute. The question whether an employee was unjustly discharged and therefore entitled to severance pay, was considered an arbitrable issue inasmuch as the question of severance pay can not "be separated from the question of wrongful discharge." *Buffalo Courier-Express, Inc. v. Dyviniak*, 124 N.Y.S. 2d 249 (Supreme Court, Erie County, Vandermeulen, J.).

A collective bargaining agreement which covered all office employees of the Los Angeles Exchange of a motion picture corporation but excepted certain named positions, among them that of "Booker-Office Manager," provided for the arbitration of "all grievances and disputes arising under this agreement" and excluded from that procedure "the terms of a new agreement or changes in wages, hours or working conditions." The question whether an employee holding the exempt position of booker-office manager was entitled to perform the duties of booker regularly or only during emergencies, was considered an arbitrable dispute under the aforementioned arbitration provision of the collective bargaining agreement. Said the court unanimously, in reversing and directing arbitration in accordance with the agreement of the parties: "Petitioner is not seeking arbitration as to whether the position of booker-office manager is exempt from the provisions of the agreement. Petitioner recognizes that such position is expressly exempt from its provisions. There is likewise no basis for the suggestion that petitioner, through arbitration, is seeking to effect a change in working conditions contrary to the terms of the agreement. The problem here is not one of working conditions. The question is simply whether the person occupying the exempt position of booker-office manager is performing duties in violation of the collective bargaining agreement. The trial court fell into the error of attempting to decide the merits of the controversy. That was a question that must be left to the determination of the arbitration board. (Code Civ. Proc., 1282; *Myers v. Richfield Oil Corp.*, 98 Cal. App. 2d 667, 671; *Royal Typewriter Co. v. Mechanical & Elec. Workers Union*, 104 N.Y.S. 2d 332." *Krug v. Republic Pictures Corp.*, 21 Labor Arbitration 364 (Cal. App., Fox, J.).

III. THE ENFORCEMENT OF ARBITRATION AGREEMENTS

A controversy was submitted to an architect for determination under the General Conditions of the American Institute of Architects, which were incorporated by reference in the contract between the parties. Said the App. Div.: "While the architect is not referred to as an 'arbitrator' in the General Conditions, and his decisions are made subject to 'arbitration' thereby, it is our opinion that the proceedings before the architect contemplated by article 39 of the General Conditions are part of a general scheme for arbitration of disputes, and that such proceedings constitute 'arbitration' within the meaning of article 84, Civil Practice Act, of which sections 1450 and 1451 are a part (see *Matter of Fletcher*, 237 N.Y. 440, 446, 451; *Matter of Stern*, 285 N.Y. 239, 242; *Matter of Webster v. Van Allen*, 217 App. Div. 219, 221; *Farrell v. Levy*, 139 App. Div. 790, 792; *Sweet v. Morrison*, 116 N.Y. 19, 27; *Faber v. City of N.Y.*, 222 N.Y. 255, 261). However, we agree with the trial court that the dispute involved here, as to breach of contract, was not one which the parties had agreed, by incorporation of the General Conditions, to submit to the architect for determination. In our opinion, the 'claims of the owner or contractor,' which the architect was authorized to determine under article 39 of the General Conditions, must be construed in view of other provisions of those conditions to refer only to claims 'relating to the execution and progress

of the work,' and not to claims arising out of alleged breach of contract (see *Matter of Young v. Crescent Dev. Co.*, 240 N.Y. 244)." Finally, the court said: "In any event, a decision of the architect, standing alone, was not intended to be final or to provide a basis for the entry of judgment, except in so far as it might relate to artistic matters." *Gold Plastering Co. Inc. v. 200 East End Ave. Corp'n*, N.Y.L.J., December 31, 1953, p. 1609 (App. Div. 2d Dept.).

The dissolution of an Illinois corporation, a party to a contract providing for arbitration in New York, terminated the existence of the corporation and thus rendered it incapable of receiving notices in the arbitration and in the court proceedings to confirm the award. The order of confirmation entered against such corporation was considered invalid. The court held that the words "action or other proceeding" in an Illinois statute authorizing such proceeding within two years after dissolution "must be limited to an action or other proceeding authorized by the law of Illinois initiated and prosecuted in accordance with Illinois law, and cannot be construed as authorizing a proceeding in New York, maintainable only in New York, and maintainable there solely because of the consequences which New York law attaches to an agreement to arbitrate in New York." *Republique Francaise v. Cellosilk Mfg. Co.*, 124 N.Y.S. 2d 93.

A seller relied on the bar of the time limitation of the contract for claims relating to quality and asserted that there is no arbitrable issue. A motion to compel arbitration and to stay a court action was granted, the court saying: "Determination of the facts and the application and interpretation of the contract provisions to the facts found are issues for the arbitrator." *Duchen v. Ford-Stone Yarns, Ltd.*, N.Y.L.J., December 16, 1953, p. 1469.

An agreement providing for arbitration of future disputes on the partition of apartment house property in Dade County, Fla., was held invalid as "constituting an attempt to oust the legally constituted courts of their jurisdiction. Such being its nature it cannot be used as a bar to an action brought on the subject matter of the contract, nor can it constitute, logically, a ground for withholding relief in a court of equity when appropriate relief is sought by either of the parties," thus reversing a decree whereby the plaintiffs were barred from maintaining their suit because of the existence of an arbitration provision in their contract. *Fenster v. Makovsky*, 67 So. 2d 427 (Supreme Court of Florida, Sebring, J.).

A collective bargaining agreement provided for submission to arbitration of all disputes which could not be adjusted between the parties within 48 hours through direct negotiation. Charges of violation of the agreement by giving out contracting and refusing to show the company's books, on the other hand, of violation of a no-strike clause, led to the contention that the union, having violated the agreement, had abrogated it and therefore could not demand arbitration. Said the court: "There are thus charges of bad faith against the union, and equally serious countercharges against the employer. With these charges and counter-charges, this court, upon a motion of this character [to compel arbitration], is not concerned. It has no jurisdiction to determine whether the

respondent is entitled to rescind the agreement. It can only pass upon the question whether there is an agreement to arbitrate, and whether the respondent has refused to proceed to arbitration (*Matter of Kahn*, 284 N.Y. 515, 523; *Matter of Frankle*, 180 Misc. 88, 90; *Matter of Metropolitan Life Ins. Co.*, 194 Misc. 511, 513). Everything subsequent to the agreement raises issues of law or fact exclusively for the arbitrators, who have broad authority with respect to such issues (*Matter of Lipman*, 289 N.Y. 76, 80; *Matter of Freyberg*, 177 Misc. 560, aff'd 263 App. Div. 805; *Matter of Tarello*, 50 N.Y.S. 2d 212, 215-216, aff'd 268 App. Div. 893)." *Mencher v. Max Weintraub, Inc.*, N.Y.L.J., December 11, 1953, p. 1416, Benvenaga, J.

In a damage action for wrongful discharge, by a union member as a third party beneficiary of a collective bargaining agreement, the employer was entitled to a stay of the action pending arbitration, in the absence of his waiver of the arbitration provision, although the union member was unable to obtain arbitration because of the expiration of the time limit for seeking arbitration. *Ott v. Metropolitan Jockey Club*, 282 App. Div. 946, 125 N.Y.S. 2d 163 (Second Dept.).

The motion of an employee to compel arbitration was denied for the following reasons: "Under the agreement between the union and the employer, the right to demand arbitration for wrongful discharge is that of the union. Since the union takes the position that the discharge in this case was justified, petitioner has no rights in law or in equity in the absence of a clear showing of bad faith on the part of the union." *Wright v. Ruppert*, N.Y.L.J., December 21, 1953, p. 1516, Nathan, J.

A member of the Airline Pilots Association International was entitled to the benefits of the collective bargaining agreement which in conformity with the Railway Labor Act (sec. 184) contained a provision for the establishment of a System Board of Adjustment whose function it was to adjust and decide disputes between the carrier by air and any of its pilots growing out of grievances or the interpretation or application of the agreement. A claim for damages for alleged wrongful discharge was submitted to the board, under the chairmanship of one of the pilot members, which decided unanimously in favor of the defendant. Although the agreement provided that the Board's decision shall be final and binding upon the parties, the pilot commenced action to recover damages for wrongful discharge. Such action was dismissed, the court stating: "The primary function of arbitration is to serve as a substitute for and not a prelude to litigation. The arbitral process affords an aggrieved party the advantages flowing from a quick and cheap decision rendered by a Board drawn from the particular industry and familiar with the specific technical matter under consideration. Broad judicial review on the merits would render resort to arbitration wasteful and superfluous; and an accepted, indeed favored, method of resolving industrial disputes would atrophy for non-use. Plaintiff was initially faced with a choice of submitting his grievance to a System Board of Adjustment or taking it to court. Having chosen the first alternative, he is bound by the rules underlying the Board's operation, one of which is the finality of its decision. Judicial inquiry is therefore at an end once it is determined:

(1) That the Board's procedure and the award conformed substantially to the statute and the Agreement, (2) That the award confined itself to the letter of submission, and (3) That the award was not arrived at by fraud or corruption." *Farris v. Alaska Airlines, Inc.*, 113 F. Supp. 907 (U. S. District Court, W. D. Washington, N.D., Murphy, D.J.).

In an action for breach of contract to employ plaintiff and to recover pay, the court found for the defendant. In overruling the exceptions of the plaintiff, the court held that where the contract between the employer and the retail bakery salesmen's association provided for a grievance committee of three members of the association and a hearing by the committee and representatives of the employer of charges against the discharged employee and submission of controversies and grievances to the State Board of Conciliation and Arbitration, the action of the grievance committee was not final, and the employer could submit an adverse decision of the grievance committee to the State Board whose decision was binding on the employer. *Norman v. Hathaway Bakeries*, 1953 Advance Sheets 625 (Supreme Judicial Court of Massachusetts).

An employer's motion to stay arbitration proceedings was denied without prejudice since "the action should be brought against the president or treasurer of the respondent union in their representative capacities (*Matter of Motor Haulage Co. [Teamsters Union]*, 298 N.Y. 208; *Andrews v. Local Union No. 13*, 133 Misc. 899)." *1717 Avenue N, Inc. v. United Service Employees Union*, N.Y.L.J., November 10, 1953, p. 1053, Keogh, J.

Arbitration was sought on the discharge of an employee under a collective bargaining agreement which provided for arbitration of grievances only when they involved "the interpretation or application of the provisions of the contract." Since that contract reserves to the employer the entire management of the business except as otherwise limited, thus impliedly maintaining the right of the company to suspend or discharge an employee, a motion to compel arbitration was denied, the court stating: "In the minutes of the grievance hearing no claim was ever made that the 'grievance' involved the interpretation or application of the contract or its provisions. The very contention of the union is based upon the right of the employer to discharge. The chief argument was that the discharge was too severe a penalty. There is nothing about the grievance involving the interpretation or application of the contract. There is nothing left to arbitrate." *Stewart Stowe, as President of United Automobile Workers of America, C.I.O., Local 1171 v. Aircooled Motors, Inc.*, 204 Misc. 228 (Supreme Court, Special Term, Onondaga County, February 13, 1953).

IV. THE ARBITRATOR

In an agreement providing for arbitration by three arbitrators, the court cannot change such method, therefore the App. Div. modified an order of Special Term, by substituting a provision "empowering the court to designate an arbitrator for either or both of the parties to the dispute in the event that either or both fail to choose an arbitrator." *Cohen, as President of Local 1506, Retail Clerks International Association, A.F. of L., v. Standard Furniture Company*, 282 App. Div. 939 (First Dept.).

When a party did not participate in an arbitration an award rendered "is a nullity for the reason that the arbitrator admittedly did not take the oath required by section 1455 of the Civil Practice Act, which applies to both statutory and common law arbitration (*Matter of Keppler* [Nessler], 225 App. Div. 99)." *M. Leiken & Son v. R-G-R Construction Corp'n*, N.Y.L.J., December 31, 1953, p. 1610, Morrissey, J.

A supervising architect was named the sole arbitrator at the time of the signing of a construction contract. Said the court, in denying a motion for his removal for disqualification: "The fact that he was the architect and accordingly interested to some extent in the outcome of the proceedings, was known to respondent. Present such knowledge, the arbitrator is not disqualified where both parties have agreed to his appointment (*In re Amtorg Trading Corp'n*, 100 N.Y.S. 2d 747, aff'd 304 N.Y. 519)." *In re Bertram Garden Apartments, Inc.*, N.Y.L.J., October 21, 1953, p. 830, Ritchie, J.

An award unanimously rendered after presentation of evidence in the presence of the representatives of both parties cannot be challenged when a refusal of a request for an adjournment after the first hearing could not be proven. Said the court: "The parties selected the arbitrators to determine facts and the law applicable to their controversy. They, like many other businessmen, apparently preferred the informality of arbitration. They were willing to have their legal rights and obligations determined in a forum where there are not strict rules of evidence to be observed. They voluntarily took their chances on mistakes of law and fact by the arbitrators. These parties chose arbitration, rather than courts of law, to settle their controversies, and they are bound by their choice. As was stated in *Wilkins v. Allen*, 169 N.Y. 494, 496: 'The award of an arbitrator cannot be set aside for mere errors of judgment, either as to the law or as to the facts. If he keeps within his jurisdiction and is not guilty of fraud, corruption or other misconduct affecting his award, it is unassailable, operates as a final and conclusive judgment, and however disappointing it may be the parties must abide by it. . . .' All questions of fact and law were submitted to the arbitrators for their decision. This court will not review that decision on the merits." *Republique Francaise v. Am. Foreign SS. Corp'n*, N.Y.L.J., December 23, 1953, p. 1541, Corcoran, J.

A contract of a spinning mill in Frankfort, Kentucky with New York fiber brokers for the importation of caroa from Brazil, gave rise to a controversy as to whether the parties had agreed that the shipment of caroa fiber, then in Brazil, was to be made "promptly" or "as soon as possible." The arbitration clause of the contract provided for "arbitration in New York in the customary manner, buyer and seller each naming his arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding upon both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of an arbitrator, the one arbitrator nominated may act as sole arbitrator." The arbitrator appointed by the New York firm proceeded as sole arbitrator, due to failure of the Kentucky firm to make its appointment, and rendered an award in favor of the New York firm which latter assigned the award for purposes of suit to a Kentucky

resident. The District Court held the arbitration provision in the contract which evidenced a transaction involving interstate commerce, valid and its enforceability to be determined under the provisions of the Federal Arbitration Act (*Jackson v. Kentucky River Mills*, 65 F. Supp. 601). On appeal the Kentucky party claimed that in case of refusal to arbitrate the recourse of the party aggrieved is to petition the court for an order that the arbitration should proceed, pursuant to sec. 4 of the Federal Arbitration Act which provides that a party "may petition any court . . . for an order directing that such arbitration proceed." The Court of Appeals Sixth Circuit held the terms of sec. 4 of the Federal Arbitration Act permissive and not mandatory and stated: "The parties explicitly contracted for arbitration of any dispute arising out of the contract or its interpretation, and agreed that if one of them failed to appoint an arbitrator within seven days after receiving the other party's nomination of an arbitrator, the one arbitrator nominated might act as sole arbitrator. There was nothing in the terms of the contract that invalidated it. It was not contrary to public policy, for such ex parte arbitrations were permitted under the common law. *International Brotherhood of Teamsters v. Shapiro*, 138 Conn. 57, 82 A. 2d 345; *Caldwell v. Caldwell*, 121 Ala. 598, 601, 25 So. 825; *Couch v. Harrison*, 68 Ark. 580, 60 S. W. 957; *Whitlock v. Redford*, 82 Ky. 390, 393; *Sanborn v. Paul*, 60 Me. 325, 327; *Gowen v. Pierson*, 166 Pa. 258, 263, 31 A. 83."

As to the assignment of the award for the purpose of a suit upon the award in Kentucky, the court said: "The validity of the assignment and title of the assignee is determined in this case by the law of the state of New York where the assignment was made, even though it might not be valid under the laws of Kentucky if made in Kentucky; *Fogarty v. Neal*, 201 Ky. 85, 255 S.W. 1049." The court further held, in affirming the judgment entered upon the award, that the one year limitation of Sec. 9 of the Federal Arbitration Act allowing a summary remedy of confirmation, does not bar the enforcement of the award in a common law action. *Kentucky River Mills v. Jackson*, 206 F. 2d 111 (Court of Appeals Sixth Cir., McAllister, C. J.).

V. ARBITRATION PROCEEDINGS

Personal service of notice of a petition to compel arbitration on the respondent in South Carolina by the sheriff's constable in Charleston, S. C., was considered sufficient under an agreement for arbitration to be held in the City of New York of which the respondent was a resident at the time of the execution of the agreement. Said the court: "The law seems clear that an agreement providing for arbitration in New York State implies consent without reservation to carry on such arbitration here and to submit to the procedure whereby the New York Arbitration Law is enforced (*Gilbert v. Burnstine*, 255 N.Y. 348; *Galban Lobo Company v. Haytian Am. Sugar Co.*, 271 App. Div. 310). In the case at bar the consent to arbitration in New York and the personal service of the papers by the sheriff's constable in Charleston, South Carolina, gave sufficient notice to the respondent requiring the respondent to submit to the jurisdiction of this court (*Bradford Woolen Corp'n v. Freedman*, 189 Misc. 242)." *Weller v. Zucker*, N.Y.L.J., October 23, 1953, p. 862, Keogh, J.

Under a building contract for the construction of a potato-chip processing plant in the District of Columbia, a court action was instituted for the balance due

to the owner, who advanced a counter-claim for delays and defective work. In view of an arbitration clause in the contract, an order of the District Court referred the matter to arbitration. One party selected a Virginia architect, the other Chief Judge Nathan Cayton of the Municipal Court of Appeals in Washington, D. C., and both arbitrators had no difficulty in agreeing on a well-known local builder as a third member of the arbitration board. Tape-recorded testimony was taken during three days and the arbitrators succeeded in getting the parties to compose their differences on all financial disputes and to agree on an immediate release of funds being held in a title company. This left for the arbitrators' decision some thirty disputed items having to do with corrections claimed to be necessary on defective work. Because the interests of two sub-contractors were also involved, the decision of the arbitrators was not made final but was drafted in tentative form, and submitted to the five parties involved, giving them an opportunity to object to any of the findings. On some suggested changes, two of the parties were heard in final argument. Without any delay, the award of the arbitrators was filed in the District Court, where the case had remained pending. The case would not have reached trial for many months or even years, and to the satisfaction of the parties concerned, the matter was disposed of in an unusually brief interval. *Simpson v. Mann*, U. S. District Court for the District of Columbia, Civil Action No. 822-53, October 22, 1953.

When parties stipulated to proceed in an arbitration, with associate counsel present for a short time and with regular counsel present for the next day, nothing could be found in the conduct of the arbitrators to be considered misconduct. Said the App. Div., in confirming a judgment entered upon the award: "All of the complaints of substance relate to alleged errors of fact or law made by the arbitrators, which we may not review." *Brighton Mills, Inc. v. Rayon Corp. of America*, 282 App. Div. 669, 670, 122 N.Y.S. 2d 113.

When a party to an arbitration agreement served an answer and thus submitted to the jurisdiction of the court in a proceeding, it is barred from demanding arbitration when, as the court said, "the answer did not contain any affirmative defense wherein the defendant-petitioner claimed a right to arbitration (*Matter of Zimmerman v. Cohen*, 236 N.Y. 15)." *King Richards Meat Markets, Inc. v. Berger*, N.Y.L.J., November 23, 1953, p. 1194, Norton, J.

In an arbitration involving plaintiff's claim that the defendant's charge for services was unwarranted, the arbitrators, finding in favor of the defendant, necessarily found the plaintiff's claim without merit. If the arbitrators had found in plaintiff's favor, they would have denied defendant any compensation. Said the court in dismissing a motion for summary judgment: "The determination of the arbitrators constitutes and has the force of a judgment and is *res judicata* as to the claim and cause of action set forth in the complaint. . . . The doctrine of *res judicata* includes in its operation and effect, not alone every matter that was actually litigated and determined, but also every matter that could or should have been and bars any attempt to again litigate the same." *Abrams v. Macy Park Construction Co., Inc.*, N.Y.L.J., November 13, 1953, p. 1085, Eder, J.

A submission of a labor-management dispute to arbitration by a sole named arbitrator provided that the award "shall be enforceable and reviewable as to law in the Superior Court of the State of California." That court modified an award holding that restrictions of the collective bargaining agreement limiting the rights of the parties to negotiate changes in straight time hourly rates of pay only were inoperative from December 1952, when the union gave its notice of reopening, up to February 6, 1953, the date of suspension of Federal wage controls. The further modification of the award was to the effect that the provisions of the collective bargaining agreement permitting the parties to negotiate on matters other than the straight time hourly rates of pay, during the time of existence of federal wage controls, became inoperative on February 6, 1953, when those controls were suspended by Executive Order. *Alpha Beta Food Markets, Inc., v. Retail Clerks International Association*, 21 Labor Arbitration 178 (California Superior Court, Los Angeles County, Swain, J.).

VI. THE AWARD

A contract for the sale of Dutch caraway seed between a New York corporation and a California copartnership provided for arbitration in New York under the Rules of the Association of Food Distributors. On an ex parte award for damages for breach of contract, a judgment of the New York Supreme Court was entered against the buyer. Since the New York court found that the contract had been executed by the buyer through their duly authorized agent acting within the scope of his authority, and that notice of all the proceedings was duly and regularly given to the defendants, the New York plaintiff was held entitled to judgment against the California defendants, the California court holding that "the judgment of the New York Supreme Court sued upon in the within action is entitled to be given full faith and credit by this Court." *Cats American Co., Inc. v. Westco Products*, Municipal Court of Los Angeles Judicial District, No. 29,321, November 18, 1953, Marchetti, J.

In an action for reformation of a contract pursuant to which arbitration was instituted and an award rendered in favor of defendant, plaintiff who had participated in the arbitration may not, when the result is adverse for him, attack the underlying contract. The remedies, said the court, "are limited to those provided in Section 1458 and 1462 of the Civil Practice Act. An award may not be attacked in a plenary action. *Raven Elec. Co. v. Linzer*, 302 N.Y. 188, 97 N.E. 2d 746. It is a final determination as to the matters embraced in it, unless it is vacated on motion pursuant to sec. 1458 C.P.A. *Springs Cotton Mills v. Buster Boy Suit Co.*, 275 App. Div. 196, 199, 88 N.Y.S. 2d 295, 297. The award is consequently binding in an action for reformation of the contract as to the matters embraced in it." *Abrams v. Macy Park Const. Co., Inc.*, 282 App. Div. 922, 125 N.Y.S. 2d 256 (First Dept.).

An award below the contract price for goods sold will not be set aside for that reason alone. Said the court: "The goods were sold on a 'run of mill' basis. The award for a sum less than the contracted price for such goods does not necessarily indicate that the arbitrators made any change, modification or alteration of the contract. It may be indicative of the fact that the goods were not

as described in the contract of sale." *Schneider Silk Mills, Inc. v. Wertex Co.*, N.Y.L.J., October 13, 1953, p. 722, Benvenga, J.

When an award providing for the payment of a certain sum stated that it was "in full settlement of all claims for the period from August 2, 1951, to and including May 31, 1953," there was no room for modification of the award or return to the arbitrator for clarification. Said the court: "Since both the affairs of the partnership and the matter of the alleged lease were before the arbitrator, it must be assumed that he took all matters into consideration in reaching his conclusion." *Wesley v. Patterson*, N.Y.L.J., December 16, 1953, p. 1469, Levey, J.

In an arbitration between a construction company and a contracting corporation, an award made computations of certain claims in a detailed report which was self-contradictory. Conflicting affidavits of the arbitrator submitted by both parties in connection with their respective motions to modify the award were not considered appropriate for the purpose of clarifying the intent of the arbitrator. On the contrary, it merely would, as the court said, "confound a confused situation." In vacating an order which had modified the award, the Appellate Division remanded the matter to the same arbitrator: "Upon the rehearing, the arbitrator will have an opportunity to clarify his intentions (cf. *Application of Perlowin*, 278 App. Div. 348, 105 N.Y.S. 2d 262)." *Minskoff v. Rhean Builders Corp.*, 282 App. Div. 918, 125 N.Y.S. 2d 344 (Fourth Dept.).

Error of the arbitrator is not sufficient to vacate an award. Said the court: "An award may not be vacated solely on the ground that the arbitrator erred as to the facts or law (*Matter of Wilkins*, 169 N.Y. 494; *Matter of Allen*, 279 App. Div. 444)." *Newspaper Guild of New York, AFG-CIO, Local 3 v. Consumers Union of the United States, Inc.*, N.Y.L.J., October 22, 1953, p. 842, McNally, J.

An award cannot be confirmed when no proof was submitted that the arbitrators took the oath required by sec. 1455 C.P.A. "which applies to both common-law and statutory arbitrations (*Matter of Keppler v. Nessler*, 225 App. Div. 99)," nor when the award was not acknowledged as required by sec. 1460 C.P.A. Said the court: "The latter section provides that 'to entitle the award to be enforced' it must be acknowledged." *Frankel v. Kay Bee Casing Co., Inc.*, N.Y.L.J., November 17, 1953, p. 1125, Keogh, J.

Transactions involving stocks of a popcorn-vending machine corporation led to the submission of various controversies to a sole arbitrator, a law professor who received over 4,000 pages of depositions and permitted some 600 exhibits to be introduced. Whereas the award itself was but five pages in length, the findings and opinion covered 215 pages. The submission provided that the decision of the arbitrator "shall be final as to all facts found by him," that he be given "such powers as are provided for by law," and that he "shall be the judge of the relevancy and materiality of the evidence offered. Strict conformity to all legal rules of evidence shall not be necessary." The award, subject to correction of a mathematical calculation, was confirmed, and a judgment

entered pursuant to its terms. In dismissing an appeal, the court commented upon the work of the arbitrator as follows: "His opinion, findings, and award, disclose that he has performed a careful, lawyer-like and judicial job in an earnest effort to adjudicate fairly the complicated rights and responsibilities of these parties. He is to be congratulated on a job well done." The court in dealing with the application of the California Statute stated (p. 170): "Arbitration has had a long and troubled history. The early common law courts did not favor arbitration, and greatly limited the powers of arbitrators. But in recent times a great change in attitude and policy has taken place. Arbitrations are now usually covered by statutory law, as they are in California. Such statutes evidence a strong public policy in favor of arbitration, which policy has frequently been approved and enforced by the courts." The court further said that "it is the law that the arbitrator is under no compulsion to explain his award or give reasons for his conclusions, *Sapp v. Barenfeld*, 34 Cal. 2d 515, 212 P. 2d 233"; it stated again "that the courts have no power to review the sufficiency of the evidence", *Pacific Vegetable Oil Corp. v. C.S.T., Ltd.*, 29 Cal. 2d 228, 174 P. 2d 441, where it was held that "the merits of the controversy between the parties are not subject to judicial review." The court also referred to the aforementioned *Sapp* case, where it was said: "Arbitrators, unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action." Finally, the court said: "In *United States v. Moorman*, 338 U. S. 457, 70 S. Ct. 288, 94 L. Ed. 256, the United States Supreme Court, in upholding as final the arbitrator's determination, held that, whether the problem raised was one of law or of fact, the courts should not fritter away arbitrator's powers under the guise of interpretation." *Crofoot v. Blair Holdings Corp.*, 260 P. 2d 156 (Cal. App., Peters, Presiding Justice).

An award fixing a rent cannot be attacked by the tenant when the three-months' time limit has elapsed since the delivery of the award to him, even if the award was not confirmed by the court. Said the App. Div.: "When there is proof of a delivery of an award no attack can be made thereon after three months from the date of delivery (*Chandler v. Kopf*, 279 App. Div. 636). The fact there was no confirmation of the award by any order of the court would not alter the result, especially where, as here, the parties adopted it by executing a lease upon the terms called for by the award (*Continental Ribbon Cutters, Inc. v. Long Properties, Inc.*, 279 App. Div. 651, aff'd 304 N. Y. 860). . . . The time limitation of three months contained in section 1463 is a bar to the maintenance of the action (*Feinberg v. Barry Equity Corp'n*, 277 App. Div. 762, aff'd 302 N.Y. 676)." *Heller Candy Company, Inc. v. 385 Gerard Avenue Realty Corporation*, 125 N.Y.S. 2d 375 (App. Div. First Dept.).

A partnership agreement provided for arbitration whereby the decision of a majority of three arbitrators "shall be controlling and binding." An award was vacated as not final and definite because, as Special Term stated, it "leaves the parties at the mercy of the report of an unnamed accountant and requires petitioners to accept such accountant's computation of costs." After the matter was remitted to the arbitrators, one of them resigned and the court designated

another to fill the vacancy. After further hearings another arbitrator resigned and a second award was made by the two remaining arbitrators. The challenge of the award that it should have been unanimous, according to a modification of the arbitration clause and to the Jewish law known as Din Torah, and that it was a new and entirely different award instead of an amendment to the first award, as ordered by Special Term, was refuted and the award was thus confirmed. *Fisler v. Segal*, 305 N.Y. 895, 114 N.E. 2d 432.

An award adding interest upon the sum found due was challenged, the dispute as stated in the submission having been only whether the parties had agreed upon a charter or a towing agreement and accordingly the amount or balance due upon which the arbitrator was designated to take proof. The court eliminated from the award the provision for interest and directed entry of judgment for the principal sum only, saying: "In the circumstances the court reaches the conclusion that the amount due follows automatically upon a determination of which agreement governed the rights and obligations of the parties and upon reaching that determination the function of the arbitrator was completed." *Russell Bros. Towing Co., Inc. v. McAllister Brothers, Inc.*, N.Y.L.J., July 2, 1953, p. 13, Saypol, J.

Standard contract forms of the American Spice Trade Association provide for an authorization of arbitrators to fix compensatory costs of not less than two and not more than ten percent of the market value of pepper as of the date of default. A two per cent "penalty" of \$436.80 as awarded the buyer was allowed by the App. Div. (see *Arb. J.* 1952 p. 180) and this judgment was affirmed by the Court of Appeals (Judge Van Voorhis dissenting). *East India Trading Co., Inc. v. Halari*, 305 N.Y. 866, 114 N.E. 2d 213.

Costs and disbursements not provided for in the arbitration award cannot be allocated under a motion to confirm the award and direct the entry of judgment thereon, the court saying it had "no power to allow costs and disbursements attendant on this motion to confirm the award where neither the agreement to arbitrate or the award referred to any such items (*Uneda-Hempstead, Inc. v. Bilt Well Contracting Co.*, 168 Misc. 774, 5 N.Y.S. 2d 1022)." *Lief v. Brodsky*, N.Y.L.J., August 21, 1953, p. 277, Frank, J.

Brevity of an award as such does not involve imperfect execution. Said the court, in confirming: "The award plainly intended to dispose of, and did in fact determine, the counter-claim of respondent when it declared that it 'is in full settlement of all claims submitted to arbitration by either party thereto.' Neither brevity nor succinctness renders an award 'imperfectly executed' as that term appears in section 1462, C.P.A." *In re Macy Park Const. Co., Inc.*, N.Y.L.J., September 1, 1953, p. 327, Rabin, J.

The discharge of an employee because of epilepsy was challenged under a specific provision of the collective bargaining agreement which expressly did not apply the grievance procedure to a dispute arising from a discharge, but in the interests of time and speedy determination provided the following: "In the case of a dispute as to the justice of a company action in a discharge case,

the parties will accept the decision of an arbitrator to be named by the Connecticut State Board of Mediation and Arbitration, provided the union files its appeal to the State Board within three working days from the date of discharge." The arbitrator ruled that the employee was not discharged by the company for just and proper cause, held his discharge from a hazardous job "commendable" and awarded further that the employee be given a non-hazardous job. The award was vacated, in view of the fact that the arbitrator had exceeded his powers by attaching conditions to the management's right under the collective bargaining agreement. The latter provided that "jobs outside the Bargaining Unit . . . shall be decided in negotiation between the Branch Management and the local Union Committee." Said the court: "The pursuit of this provision is not made a prerequisite requirement for discharge. That is management's right, but in the absence of capriciousness or discrimination, when management's act is based on a commendable basis as here, the arbitrators, it seems to me, exceeded their powers in overlooking the terms of the contract and attaching conditions as a limitation to the right of management." *American Brass Company v. Torrington Brass Workers Union, Local 423*, 21 Labor Arbitration 193 (Connecticut Superior Court, New Haven County, Quinlan, J.).

A collective bargaining agreement provided that "in any difference of opinion as to the rights of the parties to this agreement, the grievance or dispute shall be submitted to arbitration, the decision of the arbitrators to be binding on both sides." In denying a motion to modify the award of the arbitrators, the court said, referring to the aforementioned clause: "In such a case the award of the arbitrators is binding as to the law and facts and will not be set aside for error in respect of either (*Matter of Motor Haulage Co. v. Teamsters' Union*, 272 App. Div. 382, reversed on other grounds, 298 N.Y. 208)." *Internat. News Service Division No. 61 v. Internat. News Service Division of the Hearst Corp'n*, N.Y.L.J., December 24, 1953, p. 1552, Nathan, J.

ARBITRATION IN LEGAL PERIODICALS

"Judicial Innovations in the New York Arbitration Law," a note in Univ. of Chicago L. R. vol. 21 p. 148-156 (1953), reprinted in 130 N.Y.L.J. 1482 and 1500 (Dec. 17 and 18, 1953), deals with the effect of recent Court of Appeals decisions and the authority of the judiciary with regard to the arbitration process. . . . Dean Wesley A. Sturges, in an article "Arbitration Under the Arbitration Statutes of Texas," in Texas L. R. vol. 31 p. 833-865 (1953), shows in a most interesting way that the judicial administration of the statutes by Texas court decisions facilitated the use both of statutory and common-law arbitration. He concludes on page 864: "In view of the significance of the State of Texas both commercially and industrially, it is submitted that the legislature, in furtherance of article 16 of the Constitution, should conceive and enact a more comprehensive and flexible arbitration statute." That article of the Texas Constitution

provides that "It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial." . . . "Time Limitations Under the Arbitration Law" is the title of a note in the December 1953 issue of St. John's L. R. vol. 28 p. 47-62. . . . The case of *Reconstruction Finance Corp. v. Harrison & Crosfield, Ltd.*, 204 F. 2d 360 (1953), cert. den. 74 Sup. Ct. 69 (digested in *Arb. J.* 1953 p. 102), which deals with the limitation of actions in arbitration proceedings, is commented upon in Cornell L. Q. vol. 39 p. 107 and Harvard L. R. vol. 67 p. 510. . . . "The Enforcement of Arbitration Agreements in the Federal Courts: *Erie v. Tompkins*," by David R. Kochery, in Cornell L. Q. vol. 39 p. 74-98 (1953), presents an interesting discussion of the many legal questions involved in this ever-present issue, with further references in 160 notes. . . . "Labor Arbitration and the Individual Worker," by Professor Louis L. Jaffe of Harvard Univ., appeared in the Annals (of the American Academy of Political and Social Science) as part of the May 1953 Symposium: Judicial Administration and the Common Man. . . . Syracuse L. R. carries in vol. 5 no. 1 notes on the case of *Bohlinger v. National Cash Register Co.*, 305 N.Y. 539, and *East India Trading v. Halari*, 305 N.Y. 866. . . . Differentiation between appraisal and arbitration is dealt with in a comment on the Ohio case of *Saba v. Homeland Ins. Co. of America*, 112 N. E. 2d 1 (1953), in Boston Univ. L. R. vol. 33 p. 525. . . . An interesting note on *Textile Workers Union of America C.I.O. Local 63 v. American Thread Co.*, 113 F. Supp. 137, digested in *Arb. J.* 1953 p. 101, is found in Harvard L. R. vol. 67 p. 181 (November 1953). . . . "Labor Arbitration and the Law in Utah," by S. H. Kadish, appeared in Utah L. R. vol. 3 p. 403-420 (1953), and "Burden of Proof in Labor Arbitrations," by Jack H. Chambers, in Duke Bar Journal vol. 3 p. 127-136 (1953).

PUBLICATIONS

Proceedings of the Conference on Arbitration in Labor-Management Relations, University of Notre Dame, includes the various addresses and panel discussions on the arbitration of grievances, the law and arbitration, and arbitration procedures and techniques, which were delivered at the Conference on February 27, 1953, held by the Department of Economics and the College of Law of that University in cooperation with the American Arbitration Association. A Practice Arbitration and its critique, which followed the demonstration of the use of the arbitration process, is of special interest for anyone concerned with the educational process in labor arbitration. Notre Dame, Indiana: University, 1953, 89 p. \$1.25.

Case Studies in Collective Bargaining, by Walter Hull Carpenter, Jr., contains a most interesting collection of case studies, combined with brief explanations and supplemented by suggested readings. Arbitration is dealt with in Part IV of this interesting book: Third Party in Labor Disputes (p. 393) with case studies on pages 401 to 461. New York: Prentice-Hall, 1953, 465 p.

Collective Bargaining: Negotiations and Agreements, by Selwyn H. Torff, analyzes the process of collective bargaining in the light of recent experiences. Part 4, The Administration and Enforcement of Collective Bargaining Agreements, deals with grievance procedures and labor arbitrations, in a concise presentation of the various issues involved. New York: McGraw-Hill Book Co., 1953, 323 p., \$5.50.

Yearbook of the United Nations 1952. The sixth in a series of annual volumes produced by the U. N. Department of Public Information provides a detailed account of the activities of international organizations, an indispensable reference work for all engaged in the work of international agencies. New York: Columbia University Press, 1953, 981 p., \$12.50.

United States Treaties and Other International Agreements. Vol. 1, 1950; Vol. 2, Part I, 1951. This new publication, to be cited as UST, will be legal evidence of all international agreements in the courts of the United States. It contains the agreement of April 25, 1951 on Restitution of Monetary Gold which was submitted to an arbi-

trator (see *Arb. J.* 1952, p. 28). Washington, Government Printing Office, 1952, 932 p., \$5.75; 1226 p., \$7.00.

Pathways in International Law. A Personal Narrative, by Arthur K. Kuhn. Legal information on many developments towards the establishment of sound principles of international law may be gathered from this very interesting report of a New York lawyer of high repute, one of the founders of the American Society of International Law and of the American Foreign Law Association. He discusses the discussions of the Williamstown Institute of Politics in 1924 on "The Conflict of Laws and International Trade" where the author recommended "a system of international commercial arbitration in order to prevent the loss of time and money in litigating disputes arising out of international trade not only because of the divergence in trade laws of different countries but also because of the difficulty of conducting litigations in court at long distances from the place where the witnesses were available." Mr. Kuhn also describes, on p. 117, the great progress that has since been made, especially through "the American Arbitration Association by improving arbitration procedure." New York: Macmillan, 1953, 240 p., \$4.00.

Reports of International Arbitral Awards. Volume IV: Decisions of Claims Commission Mexico-United States. This publication of the United Nations, under the supervision of the Legal Department of the Secretariat, inaugurates a systematic collection of the decisions of international claims commissions rendered since the war of 1914-1918. The volume publishes texts of the decisions of the General Claims and Special Claims Commissions provided for in the various conventions of the United States and Mexico; it offers also most valuable bibliographical references to discussions of particular cases. United Nations, N. Y., Department of Public Information, 1952, 950 p., \$10.00.

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